

Appeal from decision of the Wyoming State Office, Bureau of Land Management, disqualifying an oil and gas lease offer for parcel WY 3711.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

When, following a drawing of simultaneously filed oil and gas lease offers, BLM notifies the first-drawn offeror to submit the first year's rental, that payment must be received by the proper office within the prescribed 15 days. An unsigned check, though received timely, does not constitute acceptable payment and is properly returned by BLM to the offeror. Where the offeror does not thereafter submit acceptable payment within the 15 days, BLM properly disqualifies the lease offer.

2. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

3. Evidence: Presumptions -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

Delay caused by or attributable to the U.S. Postal Service is not sufficient to excuse late payment of rental except where reinstatement of a lease is at issue under

30 U.S.C. § 188(c) (1976). When BLM returns unacceptable payment to the offeror, a charge that delay in the return of the payment by the Postal Service caused his or her subsequent late rental payment is also an insufficient excuse absent evidence that the Postal Service acted improperly. There is a legal presumption of regularity which supports the official acts of public officers, and in the absence of clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: Gary Milske, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Gary Milske appeals from the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 26, 1979, disqualifying his oil and gas lease offer for parcel WY 3711.

On December 28, 1978, BLM mailed appellant a notice of rental due after his drawing entry card obtained first priority in the November 1978 simultaneous drawing. Rental was due in the BLM office 15 days from the date of receipt of the rental notice pursuant to 43 CFR 3112.4-1. The return receipt card indicates that appellant received the notice on January 4, 1979, and therefore, rental was due on or before January 19, 1979.

On January 11, 1979, BLM received a rental check from appellant but the check was not signed. On January 15, 1979, BLM returned the check to appellant. BLM received a replacement check on January 24, 1979. Since BLM did not receive this check within the 15 days allowed by the regulation, appellant's offer was automatically disqualified.

In his notice of appeal, appellant states that he did not receive the returned rental check until January 19. He further asserts:

I feel that it took an unreasonable amount of time to return my check. Had it not been for this delay by either the Bureau of Land Management or the U.S. Postal Service the rent would have been received by the 19th.

Also, the notice attached to my check gave no indication that my lease was in jeopardy. The notice indicated that the Bureau of Land Management had received my check on the 11th of January and merely requested that I sign and return the check immediately, which I did.

[1] The applicable regulation, 43 CFR 3112.4-1, clearly states the requirements for payment of rental: "Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, * * *." This Board has consistently upheld strict application of the 15-day deadline resulting in automatic disqualification. American Petrofina Company of Texas, 41 IBLA 126 (1979); Donald E. Jordan (Supp.), 41 IBLA 60 (1979); Milton Knoll, 38 IBLA 319 (1978); Gavino San Diego, 36 IBLA 300 (1978); Susan Dawson, 35 IBLA 123 (1978).

Upon receipt, a check is at most conditional payment which does not become absolute until it is honored by the drawee bank, although the date of payment will relate back to the date of receipt. Duke v. Sun Oil Company, 320 F.2d 853, 861-62, rehearing denied, 323 F.2d 518 (5th Cir. 1963). See 43 CFR 1822.1-2(a). It is a fundamental principle of commercial law that a person is not liable upon a written instrument unless his signature appears on the instrument. UCC § 3-401(1). Fidelity Federal Savings and Loan Ass'n. v. Pioneer National Title Insurance Co., 428 F. Supp. 1382, 1385 (S.D. Ill. 1977). The Uniform Commercial Code requires that an instrument be signed by its maker to be negotiable. UCC § 3-104(1)(a). It is axiomatic, that an unsigned check will not be honored and therefore no payment will have been made. Cf. Pipeline Petroleum Corp., 34 IBLA 73, 76 (1978). Consequently, we must find that appellant made no payment to BLM within the 15-day period.

Appellant argues, in effect, that the late filing is not his fault because BLM delayed in returning the check, BLM did not inform him that the lease was in jeopardy, and the U.S. Postal Service delayed in delivering the returned check. We are not convinced by these arguments. It would be a different matter if BLM did not have payment on the due date because BLM had improperly returned the check. H. E. Stuckenhoff, 67 I.D. 285, 287 (1960). But, here, appellant can not seek to shift the burden of his original carelessness to the Government.

BLM received the check on a Thursday and sent it back on the following Monday, a period of approximately 2 working days. We do not find this to be an unreasonable period of time for an office which daily handles many similar transactions.

[2] All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Fred S. Ghelarducci, 41 IBLA 277 (1979); Juan Munoz, 39 IBLA 72 (1979); Vernon Sorenson, 32 IBLA 341 (1977). The form used to return appellant's unsigned check did not purport to deal with the status of his lease offer and did not in any way indicate that he was relieved from his obligation to comply with the regulations.

[3] Finally, this Board has repeatedly rejected the argument that a tardy initial rental payment should be excused when the delay is caused by or attributed to the Postal Service, since the Postal Service is ordinarily considered to be the agent of the sender. 1/ American Petrofina Company of Texas, supra; Donald E. Jordan, 35 IBLA 290, 293 (1973); Edgar C. Bennington (On Reconsideration), 28 IBLA 355 (1977), and cases cited. We see no reason to hold differently when BLM is returning unacceptable payment absent evidence that the Postal Service acted improperly. There is a legal presumption of regularity which supports the official acts of public officers, and in absence of clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Donald E. Jordan, supra. Appellant has submitted no evidence on which to base a conclusion that the returned check was improperly transmitted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

1/ While a delay in the receipt of annual rental payments for an issued lease which is occasioned by Post Office error can serve as a basis for reinstatement of a terminated lease, see W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (1975), the reinstatement provisions are not applicable as regards initial payment of the rental prior to lease issuance. See Mar-Win Development Co., 20 IBLA 383 (1975). But even in the situation involving an existing lease, the lease terminates upon the failure of BLM to receive the rental for whatever reason, and it is necessary to petition for reinstatement of the lease. See 30 U.S.C. § 188(c) (1976).

